

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4274 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DINUBHAI MOTIRAM VYAS AND ORS.

Versus

DISTRICT COLLECTOR AND ORS.

Appearance:

MR AJ MEMON for Petitioner
MR PREMAL JOSHI, ASSTT. GOVERNMENT PLEADER
for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 07/04/2000

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The petitioners who are the Managers of two
Cinema theatres, have challenged the validity of Rule 126
of the Bombay Cinema Rules 1954, on the ground that it
violates the fundamental right of the petitioners under

Articles 14, 19(1)(g) of the Constitution of India. They have also challenged the orders of the Commissioner of Police, Ahmedabad City, made on 30th August, 1982, as per Annexures "F" and "G" to the petition, rejecting their applications for permission to have "pan beedi gallas" in the premises of these two cinema theatres.

2. Rule 126 of the Bombay Cinema Rules, 1954 provides that no cinema premises shall be used for any purpose other than the exhibition of Cinematograph films except with a previous permission in writing of the Licensing Authority. According to the petitioners, the words "cinema premises" in Rule 126 refer to the building and not to the land surrounding the building. Therefore, the provisions would not apply to pan-beedi gallas which are situated in the compound of the cinema theatre and not in the building of the cinema theatre. The case of the petitioners is that if Rule 126 takes within its sweep the power to curtail business activity outside the cinema building, that would constitute an unreasonable restriction on the fundamental right of the petitioners to carry on business in the compound of the cinema theatre.

3. It appears that the petitioner No.1 had made an application on 2nd August, 1982 for permission for 'pan-beedi galla' in the premises of "Ajanta Ellora" cinema. That application which was made under Rule 126 of the said Rules was rejected by the Commissioner of Police on the ground that the pan-beedi-cigarette galla in 'Ajanta Ellora' double decker cinema was situated inside the premises immediately close to the entry gate and that for the vehicles coming from Income-tax circle side the turning into the entry gate of Ajanta Ellora cinema was such that the people collected at the pan-bidi cigarette galla would not be visible from the road while taking the turn and this would cause traffic hazards resulting in accidents. The Police Commissioner therefore, found that the location of the galla was such that it could not be permitted under Rule 126, in the interest of safety of the people frequenting the twin cinema. The permission was therefore, refused.

4. Similar application which was made on 3.8.1982 by the petitioner No.2 for Shiv Cinema, seeking permission for a 'pan-galla' was rejected on the ground that the building permission for Shiv Cinema was approved subject to the condition that on all the four sides the space which was shown vacant was to be used only for parking purposes and for no other purpose. It was held by the Commissioner that the entire vacant space in the compound was required

to be reserved for parking and therefore, putting up of a pan-galla would have the effect of reducing the parking area. Moreover, it would also be a traffic hazard to persons gathering near the pan galla. For this reason, the Commissioner of Police, vide his order dated 30.8.1982 rejected the application of the petitioner No.2 also.

5. In Section 3 of the said Act the requirement of licence for exhibition of a cinema is laid down. In the event of any contravention of the provisions of the Act or the Rules, such licence can be revoked or suspended as provided in Section 8 of the said Act. Section 9 of the Act empowers the State Government to make Rules, inter-alia, for the purpose of regulating the means of entrance and exit at places licenced under this Act; and providing for prevention of disturbance thereat. The State Government is empowered to make Rules for the purpose of carrying into effect the provisions of the Act. It can also make Rules under sub-section (3) of Section 9 which may provide that any person failing to comply with or contravening the provisions of any rules shall, on conviction, be punished with fine which may extend to one thousand rupees.

5.1 The word "cinema" is defined in Rule 2(b) of the Bombay Cinema Rules, 1954, to mean 'any place wherein an exhibition by means of cinematograph is given.' As provided in Clause (f) of Rule 2 of the said Rules, the words and expressions used in the Act and not defined in these rules shall have the meaning assigned to them in the Act. The word "place" as defined in Clause (c) of the Bombay Cinemas (Regulation) Act, 1953, includes a house, building, tent and any description of transport, whether by sea, land or air.

5.2 Under Rule 8A of the said Rules, it has been provided that notwithstanding anything contained in the provisions of any bye-law, or rule of a local authority or any town planning scheme, one-half of the area of the plot on which a permanent cinema is to be constructed shall be kept as an open space. A margin of not less than 7.5 meters wide open space all along the front of the cinema building and a margin of not less than 5 meters wide open space on other three sides of the building is required to be kept. Rule 3(2) provides that any person desirous of erecting a cinema or converting existing premises into a cinema shall first make public his intention to do so by exhibiting a notice in Form "A" as provided therein. Form "A" requires the particulars of the land to be given while issuing such notice as a

place of location of the cinema.

6. In the background of these provisions, it becomes clear that the phrase "cinema premises" occurring in Rule 126 does not simply mean the building of the cinema theatre, but it has a broad connotation and would include the entire premises in which the cinema theatre is located. Therefore, the expression cinema premises in Rule 126 would not only cover the building of the cinema theatre itself, but also the entire plot in which permanent cinema is located. There is therefore, no substance in the contention of the petitioners that no previous permission was required for using cinema premises for any purpose other than the exhibition of cinematograph films when such use is made in the compound of the plot in which cinema is located. The requirement of such permission of the Licensing Authority for putting to use any cinema premises for a purpose other than for the purpose of exhibition of cinema, cannot be said to be an unreasonable restriction on the fundamental rights guaranteed by Article 19(1)(g) of the Constitution to carry on any occupation, trade or business. Under Clause (6) of Article 19 of the Constitution, reasonable restrictions on the exercise of the right conferred by the said sub-clause (g) can be imposed by law in the interests of the general public. Since the general public would gather in a place where the cinema theatre is located under a licence, the interests of general public would warrant imposition of reasonable restrictions by such statutory rules to ensure the safety of the public as well as their convenience. The provisions governing the erection of building in the plots on which the cinema theatre is to be constructed and the area which is required to be kept open are all regulatory measures made in the interest of general public. There is therefore, no violation of the fundamental rights of the petitioners guaranteed by Article 19(1)(g) of the Constitution by Rule 126 of the Rules, which in our opinion, constitutes a reasonable restriction, in the interests of general public, on the exercise of such right.

7. A mere perusal of the impugned orders show that they have not been made in an arbitrary manner. These orders gave cogent reasons for not granting the permission applied for under Rule 126 of the said Rules. The impugned orders are made in lawful exercise of the powers of the concerned authority warranting no interference.

8. In this view of matter, the challenge of the

petitioners against the impugned Rule 126 and the impugned orders fails. Rule is therefore discharged with no order as to costs. Interim relief stands vacated.

*/Mohandas